



July 11, 2007

Subject: The Land Development Ordinance Committee

The Land Development Ordinance Committee (LDOC) met Wednesday, July 11, 2007, at 4 p.m., in the second floor Seminar Room located at The Plaza, 100 W. Innes Street, to discuss rewriting Salisbury's ordinance code. In attendance were Jake Alexander, Karen Alexander, George Busby, Bill Burgin (Co-chair), John Casey, Phil Conrad, Steve Fisher, Mark Lewis (Co-chair), Brian Miller, Rodney Queen, Jeff Smith, Bill Wagoner, and Victor Wallace.

Staff Present: Janet Gapen, Patrick Kennerly, Dan Mikkelsen, Preston Mitchell, Diana Moghrabi, Joe Morris, David Phillips, Lynn Raker, and Patrick Ritchie.

The Meeting was called to order with Bill Burgin (Co-chair) presiding. The minutes of the June 27, 2007, meeting were accepted as published.

Members of the committee received a new copy of Chapter 7 which addressed two of the questions for the committee pertaining to frontage of recreational open space on a public street or a public drive and a change in the 25 percent perimeter requirement for playgrounds / mini parks / neighborhood parks. (Page 7-4 the requirement for frontage on a public street has been removed.) The requirement is only along an *access* frontage. (Best terminology) The perimeter requirement is no longer 25 percent; it increases as you go up into the type of recreational open spaces. There is an addition to the minimum greenway linear park measured by an access *point* of at least a 20-foot-wide opening. Under a CD, this is a category that would be required.

Chapter 15 was replaced. Page 15-31, Section F, validity of a conditional district has been moved from 12 to 24 months.

Bill Burgin said, "The "payment in lieu of" for sidewalks got complicated and was moved to the "to do" list." There are some legal requirements in terms of grade/slopes and it is a ZBA issue anyway. Victor debated that on unimproved roads it gets to be very expensive to install sidewalks; where the county meets the city, there are irregular shoulders, you get into trees, telephone poles, wash out, etc. There needs to be an option for these cases. Mark asked how sidewalks work where there is no curb and gutter—but swales. Rodney answered that in new development swales work well. (When there are no external issues.) In Section 8 of Country Club Hills sidewalks are a waste. This is not a one-size fits all fix. George was in favor of using the "payment in lieu of" money to fill in where sidewalks are needed. Bill Burgin said staff will craft something for council.

Under sidewalk phasing for a commercial development, there will be no change from what we have now. We are struggling with short pieces of sidewalk anyway. We are just going to aggravate that situation. The two years is reasonably fair to allow sale of the property.

TO DO LIST

- Tree Protection—This will be assigned to the Tree Board. Jakes said it poses significant problems. (Rodney is on Tree Board.)
- Low Impact Development
- Bike Plan study—Currently underway
- Administrative Process—must address this before administrating the new code; these are essentially forms and are a “have to.”

Bill Burgin commented that he knew this was not an easy task. Salisbury went through this unsuccessfully before; there is tension between developers, neighbors, and planners. He believes the committee met the objective. It is almost impossible to agree. The goal is to present this to City Council August 21. Committee comments go on record for City Council. The code will be given to City Council the day presented. They are probably not going to vote right away. This is required to go to Planning Board and it is a requirement to give them a minimum of 30 days to review the code. Planning Board is charged to see that this code is consistent with the comprehensive plan. Running parallel codes is not an option; we cannot run with two zoning maps. Notifications to property owners outside the *Salisbury Post* circulation—they will be sent letters. The goal is to one day have vote to adopt or not / amend, etc.

Committee members do not know how it is going to work until you go “live.” Victor voiced concerns about how implementation will take place. How will this affect future growth? He would hate to think he participated in something that undermines the local economy or is too radical. It is important to keep the tax rate at a bearable level. There needs to be a mechanism that holds somebody accountable, perhaps a review process over a couple of years. If Salisbury were a business, this would be a very radical departure from the way we have been doing business. (That is not always bad.) The overlay on East Innes has been effective and perhaps some sort of overlay is the solution. Over a generation things can change. Victor has concerns that some people do not attend the City Council meetings and their voice would not be heard.

Bill Burgin always felt, if we created something unmanageable, we can come to council and say so; a text amendment is always an option. Meet in six months after the adoption to review the impact on staff and do a general review.

Steve Fisher thought that last week it was most productive to do the case studies. He wants to do more studies and look at some cases that are coming up; he would really like to test more—is there a good number. Take 3-6 months of what walks in the door and apply an overlay. Steve is concerned about unintended results.

Joe disagreed and said the new code is more flexible. Everything in our existing code is in the new code.

Bill Burgin asked, “Can we do the test cases as part of the Planning Board and City Council process? It is all public process. Bill Burgin thought the case studies went pretty well. Mark Lewis would like to see new “Super” TRC process, too.

Bill Wagoner said that this code, as written, he cannot support. The fears he has are due to the consultant writing the original draft and that the code was not written by a citizens advisory committee. The committee dwindled and the committee did not write the code, but reacted to what was handed to them. He has a philosophical problem with what has been codified here, which is a lot of new. This forces, more and more, the private sector to develop public use issues. He objects to legislating aesthetics which change in time. The normal Planning Board and City Council amendment process is not sufficient or comprehensive enough to deal with the outcome of this code. We need a statute mechanism to bring a group together to be able to see how this is working. He could support the document if he could see how it looks live. He “loves” the CD process.

Joe said his fear is that what Mr. Wagoner described a process that usurps City Council authority. They would create a body by statute that at some point, at a date certain, would have the authority to come back in...Bill Wagoner responded that there needs to be a guarantee.

Mark Lewis has an understanding of things that are coming down the pike (we talked about project advocate stuff). We need look at construction standards—he wants developer input. The whole goal of the new code is to enable Vision 2020 and to streamline the development process. Council has a goal of good customer service. Mark wants performance reviews of staff, time it took to get through the process, etc. (A feedback survey) Are we enabling the vision of the community? Is that a pipe dream?

George Busby thought that was excellent and should be added to Chapter 19 (or 17) as a possibility. (The chapter on Boards and Responsibilities, etc.)

Preston Mitchell said, “Speaking of unforeseen consequences, an extended review period of cases that would meet the definition of a major/minor site plan or subdivision makes sense because that is really going to test the TRC.” The problem of a pseudo review of a conditional district is that a CD grants so much more for a developer. A CD is discretionary plan review on the dais. It is very liquid. Bill Burgin said the CD is the problem for looking ahead. “You guys are making the rules for a CD.”

After some discussion, Victor stated that he agrees with Bill Wagoner that there needs to be some mechanism to do our due diligence when you are having this great a change. Joe said that this would not be in text in the code, but in the form of a motion—A condition to review and have an advisory group reconvene.

Mark Lewis believed would happen is, as we discuss this, “it is going to evolve to testing the draft document on a parallel course with the Planning Board review.” There is a tremendous amount of staff resources that continue to be expended here. We have to, at some point in time, draw a line and go forward.

QUESTION 1

Bill Burgin said, "Let's do a vote."

- *Can you support the document as it is?*
 - *Vote "no" for the document as is presented.*
 - *Yes, if I can have a sample review and a long-term implementation review process (add some kind of time frame.)*

Jake requested back testing and forward testing, post review—old code, new code, both ways—time frame for testing and a time frame that is sufficient. Is this an honorable mistake?

Karen Alexander *can* endorse the document because "we have gone through this over the period of two years." (She has not been to every meeting, but she has kept up with the minutes.) It is not perfect, but she would hate see Salisbury keep holding this and not being able to use it. We are at a period in our history of experiencing a lot of growth. She cautioned that we are going to be too late to affect that growth and to really hope to have results for all of the work that the "Vision 2020" strives for. (She worked on that citizen committee as well.) Mrs. Alexander said she has deal with codes all over the state and other states and she does not think that this code is any more ominous, or even as ominous, as many other communities. All codes should be looked at as an opportunity to not just meet the absolute minimum, but to look at that as the constraints within which you design; with creativity, you can overcome (especially with the CD process) any kind of issues. We proved last week, with the case studies, that we can use this code. You can seek relief by petitioning for a text amendment. She did agree that review is good to continue during the Planning Board review period. A review after 24 months (post adoption) is a good idea.

Jake Alexander said his vote is "no" as written. He has had a problem with this from beginning. He believes that the City made a serious mistake by hiring Craig Lewis as a consultant. The document he presented unfortunately started this process on a negative spiral and not a positive one, from which we never recovered. This has been nearly a 3-year process that should not have taken this long. The reason it is taking so long is because of that initial decision. Jake is uncomfortable with a form-based code. He worries a great deal about unintended consequences. There are parts of this code he likes— Chapter 2 grid classification—the transect. He likes most of the environmental document. CD is good with some revision. He can list 20-30 things he disagrees with regard to sidewalks, parking spaces, etc. As written, frankly we would be better off combining the old and new.

John Casey voted "no" with no comment.

Steve Fisher said this document is much closer to Salisbury's Vision 2020 Comprehensive Plan—his vote is "yes."

Bill Wagoner voted "no." He indicated early his reasons why.

Victor Wallace voted "no." He elaborated earlier the issues and his concerns for economic growth of the community and the liability that this document could be to Salisbury's future growth.

Jeff Smith voted a conditional "yes." It is much better than what we have; it lends itself to the Vision 2020 Comprehensive Plan and moving forward (with a testing period). He does not want to go back to the old code. Review and test the new code.

George Busby voted “no.” The document needs further refinement. It does allow for a lot of good things. There are some very suspicious things in it.

Rodney Queen voted “no” as written. He would like to test the document further.

Brian Miller voted “yes.” There is more right than wrong. It is predictable and gets us closer the Vision 2020 Comprehensive Plan. He does not believe that it is simpler.

Phil Conrad voted “yes.” It is consistent with the community approved long-range plan (Vision 2020 Comprehensive Plan). The aspect of mobility is implemented; it facilitates better mobility within the community. It will shift some of the cost from city government to the developer.

Mark Lewis said we would not be voting today if he was not in favor of “yes.” He hears the concerns of the committee and will support the group’s recommendations. He wants a streamlined development process that is more predictable. Sitting on the dais trying to decide what your site plan / development looks like is too dangerous. He is in favor of a “yes” vote.

Bill Burgin supports the document as it is right now. It enables Vision 2020. It is not perfect but he believes the new code to be fairer to both citizens and developers.

Results for Question 1: 7 “yes”– 6 “no”

TESTING QUESTION

Could you support this document if it had associated with it back testing, forward testing, and a review over time?

Member	Yes/No	Comments
Karen Alexander	Yes	
Jake Alexander	Yes	
John Casey	Yes	
Steve Fisher	Yes	
Bill Wagoner	Yes	
Victory Wallace	Yes	
Jeff Smith	Yes	
George Busby	Yes	
Brian Miller	Yes	Agrees with the testing.
Rodney Queen	Yes	1 st round of questions the regular attendees said “no”; those who attended LDOC meetings on occasion voted “yes.” More testing, comparison and review is needed.
Bill Burgin	Yes	
Phil Conrad	No	Not sure what further testing would accomplish. In favor of the length of term testing; add members of the community to the review committee.
Mark Lewis	Yes	In favor of whatever makes this committee happy.
Bill Burgin	Yes	He appreciates the need to be as right as possible.

VOTE FOR OLD CODE, NEW CODE or BOTH (hybrid)

Member	Old Code	New Code	Both	Comments
Bill Burgin		yes		He was shocked to hear Jake's comments. Predictability seemed to be the most important thing. He sees the fallacy of dais planning. From the developer's point of view, just tell me what the rules are and let me go build it is very important. Also the community needs to be protected. If we go outside the rules, we go with the legislative process. That is what makes this code really good. This is not a form-based code; it is a hybrid at best.
Mark Lewis		yes		
Phil Conrad		yes		
Brian Miller		yes		
Rodney Queen			yes	Possible combination with further modification. The new code is a hybrid already. Too many fears to put the new code into action. It does need testing. Hybrid, with a phasing out of the old and an upgrading of the new code as we find out unintended consequences that will reveal themselves in time.
George Busby		yes	yes	
Jeff Smith		yes		
Victor Wallace			yes	
Bill Wagoner	3 rd choice	2 nd choice	1 st choice	Flawed premise under which we wrote a code that did not need to be written. We should have rewritten the one we had. What part of the old code did Jake like? The legislative process is healthy and usually works. Could have rewritten the old code and he would have been OK. An adversarial relationship with staff is not bad. He worries that a form-based code gives the written word too much power and takes away the collaborative effort.
Steve Fisher	3 rd choice	1 st choice	2 nd choice	
John Casey		yes		
Jake Alexander			yes	
Karen Alexander		yes		

TIME FRAME QUESTION

Is there a time frame for which we would feel we have done an adequate job of that testing?

Member	Time/Comments
Phil Conrad	3 months
Brian Miller	Labeled 6/27 as back testing; cases seemed to have good results. We can test current cases for another 6 months. (January 1) Answer the question, "Can we do 'by right'?" Comment session from the committee about the testing to City Council. Have a "post test" or review after one or two years.
Rodney Queen	Disagreed with Brian about back testing being done. Put this testing together in a positive atmosphere in the next six months.
George Busby	4 months minimum—not only the dimensional requirements, it is also the performance of the TRC that he is concerned about monitoring. (TRC 6-8 meetings)
Jeff Smith	More back testing / six months back and forward. He is not convinced there is not a way to run the codes parallel. Get down to one zoning map.
Victor Wallace	6 months back and forward for testing
Bill Wagoner	Back testing 3 months and exclude single residents. Forward testing—have the adoption on 1/08. Then, 24 months after adoption, have a review by a citizens advisory committee.
Steve Fisher	6 months look at numbers forward and back. He would like to see how we operate internally. See how the forms perform. He would love to invite developers on this committee to test their projects through the process.
John Casey	6 months forward and back. Will someone monitor any problems people (public) have coming through and understanding the process?
Jake Alexander	6 months back and, once that is done, 6 months forward. Whose eyes are on the results? He is willing to look at it because he is interested.
Karen Alexander	6 months back and January 1, 2008, adoption of the code
Mark Lewis	Sees that a subgroup testing and reviewing needs to be on an intensive schedule. He would like that group to report back 11-06-07 at City Council for a Public Hearing. He is OK with all monitoring but it does tax the staff. We have things that need to get done.
Bill Burgin	3 months going forward; having trouble because of the upcoming election. By November Salisbury may have a new council. There are people who want this code adopted. He is hoping this offers to the community what we have been looking for.

Steve Fisher added that if we have a good sampling in 3-4 months we could be comfortable with that. The value of going forward is higher than that of looking back. Bill Burgin said that there are a couple of other document requirements for the new code like the lighting plan.

The Chair asked for a show of hands of who would *not* want to be a part of the forward/back review process; all were in favor of being a part of the process. After a brief discussion, Mr. Burgin thanked everyone once again for their commitment and hard work.

Respectfully submitted,

Diana Moghrabi
City of Salisbury
Planning Department